

**REMARKS**

In light of the above amendatory matter and remarks to follow, reconsideration and withdrawal of the rejections of this application are respectfully requested.

Claims 1 and 3-7 are pending in this application. Claim 1, which is independent, is hereby amended. It is submitted that claim 1, as well as claims 3-7, as originally presented, were in full compliance with the requirements 35 U.S.C. §112. No new matter has been introduced by this amendment. Support for this amendment is provided throughout the Specification. Changes to claim 1 are not made for the purpose of patentability within the meaning of 35 U.S.C. §101, §102, §103, or §112. Rather, these changes are made simply for clarification.

**THE REJECTION BASED UPON 35 USC 101**

Claims 1, 3-5 and 7 were rejected under 35 USC 101 as allegedly being directed to non-statutory subject matter. The Examiner contends that claim 1 "is considered software per se."

Reconsideration of these rejections is respectfully requested for the following reasons:

Claim 1 is directed to "apparatus for processing audio visual data." Thus, claim 1 specifically recites "apparatus" and should not be considered as being directed solely and exclusively to software. Furthermore, paragraphs [0052]-[0053] of Applicants' corresponding published application describe specific structure that is used for the editing means recited by claim 1. In addition, claim 1 calls for recording/reproducing means which, as described in Applicants' specification and as is known by those of ordinary skill in the art, is structure per se

and is not merely software. Claim 1 is not directed to a computer program. Accordingly, the withdrawal of the rejection of claims 1 and 3-5 is respectfully requested.

In rejecting claim 7, the Examiner contends that the computer-readable medium recited in the preamble of claim 7 can be both a tangible medium as well as an intangible medium. However, paragraph [0070] of Applicants' corresponding published application states that the medium used to control the CPU constitutes ROM 32 or RAM 33. These memory devices clearly are tangible media. Thus, Applicants' specification discloses that, in order to control the CPU, the program used to control the CPU is stored in a tangible medium: ROM or RAM. Thus, when read in its proper context, claim 7 is directed to the tangible embodiment described in the instant specification.

Finally, it is readily apparent that claim 7 conforms to the Office Guidelines for computer-related inventions. Consequently, claims 1, 3-5 and 7 all are directed to statutory subject matter; and the withdrawal of the rejection of these claims based upon 35 USC 101 is respectfully solicited.

#### THE REJECTION BASED UPON 35 USC 103

Claims 1 and 3-7 were rejected under 35 U.S.C. §103(a) as allegedly unpatentable over U.S. Patent No. 5,264,839 to Lang in view of U.S. Patent No. 6,226,296 to Lindsey in further view of U.S. Patent No. 6,286,085 to Jouenne. The explanation for the rejection based upon the combination of Lang and Lindsey is substantially the same explanation as set out in the previous Office Action dated January 28, 2008, which is substantially the same explanation as set out in the Office Action dated July 2, 2007.

From the arguments presented in the Amendment filed April 28, 2008 it should be clear that the purpose of the present invention is to speed up an editing operation, especially if

part of that editing operation involves simply the copying of entire blocks of data from a source to a destination. This copying is referred to in the present specification as asynchronous editing, wherein a data file is transferred from a read drive to a write drive in an asynchronous manner, that is, without synchronizing signals (see, for example, paragraphs [0068], [0129] and [0131]-[0132] of Applicants' published application). The editing operation also may entail searching for portions of a file on the read drive and transferring those portions, possibly with special effects, through an editing processing unit to the write drive in a synchronous manner, that is, with synchronizing signals (see, for example, paragraphs [0067] and [0130] of Applicants' published application).

The edit commands specify whether the editing operation is asynchronous (copying) or synchronous (excising and transferring, perhaps with special effects). The edit commands are included in the edit procedure data, which is described in the specification as Edit Procedure List (EPL) data. When an edit command specifies asynchronous editing, the read and write drives and the editing unit operate without synchronization. When the edit command specifies synchronous editing, the drives and editing unit are synchronized. This is defined in Applicants' claims.

Claim 1 is typical and recites, *inter alia*:

receiving means for receiving ... an edit command specifying ... whether said audio visual data is to be edited synchronously or asynchronously;

analyzing means ... to recognize whether the edit command is a synchronous or asynchronous edit command ...;

editing means for editing said audio visual data synchronously or asynchronously in accordance with said edit command;

determining means for determining when said edit command specifies an asynchronous command for copying of said audio visual data and for determining

when said edit command specifies a synchronous command for editing said audio visual data; and

controlling means which, if said edit command is determined to be an asynchronous copy command, then transfers said audio visual data from a copy source ... to a copy destination ... without synchronizing ... ; and if said edit command is determined to specify a synchronous editing action, then transfers the unedited audio visual data reproduced ... to said editing means for the specified synchronous editing action, and transfers the thus-edited audio visual data coming from said editing means ... while synchronizing ... in operation. (emphasis added.)

As understood by Applicants, U.S. Patent No. 5,264,839 to Lang copies a recorded audio/video program from one storage medium to another. A program may be edited, as by inserting frames into the program (see the paragraph bridging columns 6 and 7 of Lang). Copying of a program requires playing back the program from a medium, and

“once the complete video/audio program has been stored in memory 13, the recording media from which the stored program has just been read is replaced by blank recording media upon which the stored program is to be copied.” (col. 9, lines 51-55.)

“As the program is being read from the first or original recording media, it is simultaneously viewed on the TV screen ... converted to digital signals, compressed and stored in memory 13. Once the digital audio/video program is stored in memory 13, editing is accomplished by the user through control of DCU 14 ....” (col. 10, lines 11-18.)

Thus, both copying and editing are carried out synchronously. There is no asynchronous operation contemplated by Lang. While the Office Action refers to col. 9, lines 37-63 of Lang as purportedly disclosing either asynchronous or synchronous editing, neither this portion of Lang, nor any other portion that has been particularly referenced, describes asynchronous editing. Nor does Lang even remotely suggest an editing system that operates either asynchronously or synchronously.

Moreover, there is nothing in Lang to suggest “an edit command specifying ... whether said audio visual data is to be edited synchronously or asynchronously,” as recited in Applicants’ claim 1. Nor does Lang “recognize whether the edit command is a synchronous or asynchronous edit command” as also recited by the claim. Lang fails to suggest “editing said audio visual data synchronously or asynchronously in accordance with said edit command” as recited in Applicants’ claim 1. Additionally, Lang does not describe “determining means for determining when said edit command specifies an asynchronous command for copying of said audio visual data and for determining when said edit command specifies a synchronous command for editing said audio visual data” as claimed. Finally, Lang does not transfer audio visual data from a copy source to a copy destination without synchronization in response to an asynchronous copy command; and transfer unedited, reproduced A/V data to editing means for the specified editing action, and then transfer the thus-edited A/V data from the editing means with synchronization in response to a synchronous edit command, as called for by Applicants’ claim 1.

These significant deficiencies in Lang, which the Examiner apparently recognized, are not cured by Lindsey. Lindsey relates to a network where at least two routing switchers are connected together with a tie-line composed of a plurality of full duplex dedicated router interconnects. This configuration results in a contention free environment as long as the number of users along a given tie-line at a given moment does not exceed the number of dedicated routing switcher interconnects that compose that tie-line. As before, the Examiner refers to col. 2, line 57 to col. 3, line 3 of Lindsey as teaching copying A/V data from one recording/reproducing means to another without synchronizing the two means. But, this portion of Lindsey states:

Therefore, there is a particular need for a system which can transfer continuous data (e.g., video and audio) with bursty data (e.g., Ethernet) and/or packetized data (e.g., asynchronous transfer mode (ATM)) through a routing switcher in the form of a single bit stream and without disrupting the laminarity of the continuous data.

Such a system provides a multi-format adaptive plesiochronous network (MAP). A plesiochronous network multiplexes multiple sources of isochronous data together such that two or more signals are generated at nominally the same digital rate and their significant instances occur at nominally the same time. Multi-format means multiprotocol. Adaptive means that the multiplexer can handle the different formats, or streams, of data.

As understood, Lindsey's multiplexing of isochronous data from multiple sources is a synchronous (as opposed to an asynchronous) operation. While Lindsey mentions asynchronous data, Lindsey fails to describe editing, copying, edit commands, synchronous or asynchronous edit operations. Lindsey is not concerned with editing. Thus, it is not surprising to find that Lindsey does not even remotely suggest transferring audio visual data from a source to a destination without synchronization when the edit command is an asynchronous copy command; and transferring audio visual data from the source to the destination with synchronization of the editing means and the recording/reproducing means when the edit command specifies synchronous editing.

Accordingly, it is not seen how the addition of Lindsey to the teachings of Lang suddenly would enable one of ordinary skill in the art to recognize that Lang should be modified in a manner not contemplated by either Lang or Lindsey in an effort to reject Applicants' claim 1. First, there is no reason to combine these references. Second, the subject matter of these references is so unrelated that one concerned with editing, after reading and understanding Lang, would have no reason to look to Lindsey, which is concerned with a telephone switching exchange, for a suggestion that would be helpful in modifying Lang's editing operation. And third, even if these references are combined (which is strenuously opposed by Applicants'

representative), the resultant combination still would not teach the aforequoted recitations found in claim 1.

Apparently recognizing the differences between Applicants' claim 1 and the combination of Lang and Lindsey, the Examiner adds Jouenne to this combination. As the Examiner correctly notes, Jouenne is directed to a backup system for a cellular network in which data is backed up synchronously or asynchronously. But, this backup system simply copies data. Jouenne is not concerned with editing audio visual data. Nor is there any suggestion in Jouenne of an edit command that can specify asynchronous copying or that can specify synchronous editing.

Thus, even if Lang, Lindsey and Jouenne are combined, the resultant combination still would not suggest to one of ordinary skill in the art

recognize whether the edit command is a synchronous or asynchronous edit command in the edit procedure data;

editing said audio visual data ... in accordance with said edit command;

if said edit command is determined to be an asynchronous copy command, then transfer[] said audio visual data from a copy source ... to a copy destination ... without synchronizing the two recording/reproducing means and the editing means ...;

if said edit command is determined to specify a synchronous editing action, then transfer[] the unedited audio visual data reproduced from one of said ... recording/reproducing means to said editing means for the specified synchronous editing action, and transfer[] the thus-edited audio visual data coming from said editing means to either the same or another of said recording/reproducing means for storage therein, while synchronizing said editing means and the two recording/reproducing means in operation.

Furthermore, it is submitted that the combination of Lang, Lindsey and Jouenne is unwarranted. There is no motivation or suggestion to combine Lang, who is concerned with copying and editing only by way of a synchronous operation, with Lindsey, who is concerned with routing bit streams through a switcher, and Jouenne, who is concerned with a backup

system for a cellular network. It is respectfully submitted that the Examiner has used Applicants' claims as a guide to reconstruct the prior art by assembling individual, unrelated bits and pieces. It is improper to use the hindsight gained from Applicants' specification to reassemble the prior art in an effort to reject Applicants' claims. The only motivation to use Lindsey and Jouenne in the manner attempted by the Examiner is provided solely by Applicants themselves. The Court of Appeals for the Federal Circuit, as well as its predecessor court, has long held that obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination. While *KSR* may have lowered the bar on establishing obviousness, there must be some logical reason for one of ordinary skill in the art to reconstruct the references in the manner proposed in this Office Action. It still is impermissible to use Applicants' claims as a frame and the prior art references as a mosaic to piece together a facsimile of the claimed invention. But that is precisely what has been done in the present case. For this reason alone, the rejection of claim 1 should be withdrawn.

Therefore, reconsideration and withdrawal of the rejection of claim 1 as allegedly being obvious in view of the combination of Lang, Lindsey and Jouenne are respectfully requested.

For reasons similar to those recited above, Applicants submit that claims 6 and 7 are also patentable.

Claims 3, 4 and 5 all depend from claim 1 and therefore recite all of the features recited in claim 1. It follows, therefore, that claims 3-5 are unobvious over the combination of Lang, Lindsey and Jouenne for the very same reasons urged above.



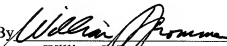
In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

In the event the Examiner disagrees with any of statements appearing above with respect to the disclosures in the cited references, it is respectfully requested that the Examiner specifically indicate those portions of the references providing the basis for a contrary view.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

Respectfully submitted,

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